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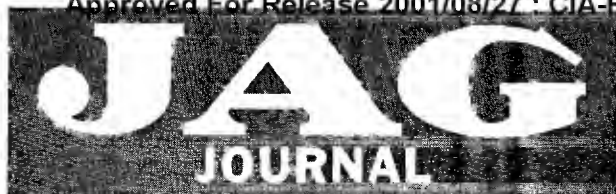


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TORT CLAIMS UNDER NEW ACT

By **Lcdr M. H. Staring, USN**

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The printing of this publication has been approved by the Director of the Bureau of the Budget, 13 July 1948.

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THE Federal Tort Claims Act has been repealed; but don't call off the investigator. It has been re-enacted, in revised form, as a part of Title 28, United States Code. In codifying and re-enacting the provisions of the original law, it was apparently the intent of the Congress that no substantive changes be made. For the most part this intention appears to have been fulfilled; but there are enough changes in phraseology, arrangement, and substance to warrant a close study of the revised law by everyone concerned with its administration.

In the first section of Public Law 773 of the Eightieth Congress, approved by the President on 25 June 1948, effective 1 September 1948, it is stated: "Title 28 of the United States Code, entitled 'Judicial Code and Judiciary' is hereby revised, codified, and enacted into law, and may be cited as 'Title 28, United States Code, section—,' as follows: * * *" There follows a complete revision of Title 28, including a number of scattered sections which contain the provisions formerly found in the Federal Tort Claims Act, Title IV of the Legislative Reorganization Act of 1946, Public Law 601, Seventy-ninth Congress. Section 39 of Public Law 773 includes a "Schedule of Laws Repealed". Included in this schedule are sections 401-423 of the original Federal Tort Claims Act, and section 1 of the Act of 1 August 1947, Public Law 324 of the Eightieth Congress, which amended the Federal Tort Claims Act.

Public Law 773 thus repealed all sections of the Federal Tort Claims Act with the single exception of section 424. With regard to section 424, left standing on the statute books, the Reviser's Notes which explain in detail the changes made in the revision of Title 28, United States Code, state:

"Section 946 of title 28, U. S. C., 1940 ed., which was derived from section 124 (b) of the Federal Tort Claims Act, was omitted from this revised title. It preserved the existing authority of federal agencies to settle tort claims not cognizable under section 2672 of this title. Certain enumerated laws granting such authority

were specifically repealed by section 121 (a) of the Federal Tort Claims Act, which section was also omitted from this revised title. These provisions were not included in this revised title as they are not properly a part of a code of general and permanent law."

Section 2 of the Act of 1 August 1947, broadening the statute of limitations of the Federal Tort Claims Act with respect to death claims in certain jurisdictions, was also left standing on the statute books through omission from the schedule of laws repealed by Public Law 773.

The provisions governing the administrative settlement of federal tort claims, formerly found primarily in part 2 of the Federal Tort Claims Act, are now located in Title 28, United States Code, sections 2401, 2671-2674, 2678, and 2680. The provisions governing civil action against the United States in tort cases, formerly contained primarily in part 3 of the Federal Tort Claims Act, are now found in Title 28, United States Code, sections 1254, 1255, 1291, 1346, 1402, 1501, 2110, 2401, 2402, 2411, 2412, 2671, and 2674-2680.

The only major substantive change which appears to have resulted from the reshuffling of the provisions of the Federal Tort Claims Act occurs in Title 28, United States Code, section 2675, containing some of the provisions formerly found in section 410 (b) of the original act. The Federal Tort Claims Act, as originally enacted, here provided that no suit should be instituted against the United States upon a claim presented to any Federal agency for administrative consideration unless the Federal agency had made final disposition of the claim. It was further stated that the claimant might, upon 15 days' written notice, withdraw his claim from consideration by the Federal agency and commence suit thereon. Section 410 (b) of the act then provided that, "as to any claim *so disposed of or so withdrawn*," [italics supplied] no suit should be instituted for any sum in excess of the amount of the claim presented to the Federal agency unless the increased amount was based upon newly discovered evidence or upon evidence of intervening facts relating to the amount of the claim.

These particular provisions of section 410 (b) of the original act have been placed in two subsections of Title 28, United States Code, section 2675. Subsection (a) provides that an action shall not be instituted upon a claim against the United States which has been presented to a Federal

agency unless the Federal agency has made final disposition of the claim. Subsection (b) provides that the claimant may, upon 15 days' written notice, withdraw his claim from consideration by the Federal agency and commence action thereon. It is then provided, still (and *only*) in subsection (b), that "Action *under this subsection* shall not be instituted for any sum in excess of the amount of the claim presented to the Federal agency," [italics supplied] subject to the same exceptions as contained in the original act.

The effect of the revised arrangement of the provisions of section 410 (b) of the former Federal Tort Claims Act is to provide that a claimant who withdraws his claim from consideration by a Federal agency cannot bring suit for any sum in excess of the amount of his administrative claim, whereas a claimant whose claim has received final administrative disposition by a Federal agency is not limited to the amount of his administrative claim in bringing a subsequent civil action against the Government. It is highly probable that this substantive change in the law was inadvertent; but it appears, nevertheless, to be real.

The provisions of the original Federal Tort Claims Act expressly limiting its application to claims "accruing on and after January 1, 1945," have been omitted from the revision of Title 28, United States Code. It is stated in the Reviser's Notes that these words of the original act were "omitted because executed as of the date of the enactment of this revised title." The 1-year statute of limitations will of course bar an initial filing of any claim which accrued prior to 1 January 1945. It is conceivable, however, that a case may arise involving a claim which accrued prior to 1 January 1945, upon which a claim was filed within 1 year from the date of accrual, and upon which no final action has been taken. In such a remote event, it is considered probable that a consideration of the legislative history of the revised title will result in a decision that the Congress intended no broadening of the original waiver of sovereign immunity to result from the omission of the limiting phrase in the codification.

A minor oversight in an internal reference in Title 28 is worthy of note, if only to save someone a slight and momentary confusion. Sections 2671-2680 of the revision are contained in chapter 171 entitled "Tort Claims Procedure." The number of this chapter was 173 in the original bill, but was changed to 171 by a Senate amendment.

Section 1346 (b), however, gives jurisdiction of civil actions in tort cases to the United States district courts, and to certain other courts, "Subject to the provisions of chapter 173 of this title." It was undoubtedly intended that jurisdiction should be conferred subject to the provisions of chapter 171, rather than chapter 173, as there is no chapter 173 in the revised title as it now stands.

In line with the general revision of Title 28 with relation to the Federal courts, there has been a change in the wording of the original act which conferred jurisdiction in tort cases upon "the United States district court * * *, including the United States district courts for the Territories and possessions of the United States." This jurisdiction is now conferred by Title 28, United States Code, section 1346 (b), upon "the district courts, together with the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands." This change removed a prior question concerning the application of the Federal Tort Claims Act to the Panama Canal Zone. By express definition else-

where in Title 28, the term "district court of the United States" includes the United States district courts for all States, the District of Columbia, Hawaii, and Puerto Rico. The title also changes the official designation "United States circuit court of appeals" to "United States court of appeals."

The only other changes which appear to have been made in codifying and re-enacting the provisions of the former Federal Tort Claims Act are general changes in phraseology. The prolixity of the original act has been appreciably reduced, and the meaning has in some instances been clarified. It is regrettable, from a practical standpoint, that the convenient handle, "Federal Tort Claims Act," is no longer an officially authorized reference; and the dispersal of the provisions of the law through numerous isolated sections of the revised title makes for a certain awkwardness when a general reference is desirable. To minimize confusion in referring to the various provisions of the law during the transition period, there is reproduced below a table of parallel references to assist in the location of the reincarnate provisions of the dear (in cost) departed "FTCA".

FEDERAL TORT CLAIMS ACT

Parallel Reference Table

*Repealed by Sec. 39, Public Law 773, 80th Cong., 62 Stat. 869.

Sections of Original Act	Original Stat. Citation: Title IV, Pub. Law 601, 79th Cong., 60 Stat. 842-846	Original Section of 28 U. S. C.: 921, 921 note, 922, 931-934, 941-946	New Stat. Citation: Pub. Law 773, 80th Cong., 62 Stat. 869-1009	New Section of 28 U. S. C.: 1291, 1346, 1402, 1504, 2110, 2401, 2102, 2411, 2412, 2671-2680
401*	60 Stat. 842	921 note		(Omitted.)
402*	60 Stat. 842-843	941	62 Stat. 982	2671.
403*	60 Stat. 843	921	62 Stat. 983	2672.
404*	60 Stat. 843	922	62 Stat. 983	2673.
410 (a)*	60 Stat. 843-844 (amended Pub. Law 324, 80th Cong., 61 Stat. 722).	931 (e)	62 Stat. 933, 937, 971, 973, 983.	1346 (b), 1402 (b), 2402, 2411, 2412 (c), 2674.
410 (b)*	60 Stat. 844	931 (b)	62 Stat. 983, 984	2675, 2676.
411*	60 Stat. 844	932	62 Stat. 933, 973	1346 (c), 2411.
412 (a) (1)*	60 Stat. 844	933 (a) (1)	62 Stat. 929	1291.
412 (a) (2)*	60 Stat. 844-845	933 (a) (2)	62 Stat. 942, 964	1504, 2110.
412 (b)*	60 Stat. 845	933 (b)		(Omitted; covered by 1254, 1255.)
413*	60 Stat. 845	934	62 Stat. 984	2677.
420*	60 Stat. 845	942	62 Stat. 971	2401 (b).
421*	60 Stat. 845-846	943	62 Stat. 984	2680.
422*	60 Stat. 846	944	62 Stat. 984	2678.
423*	60 Stat. 846	945	62 Stat. 984	2679.
424 (a)	60 Stat. 846-847	921 note		(Omitted.)
424 (b)	60 Stat. 847	946		(Omitted.)